IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAROLD E. RANKIN, JR.,	)	F I L E D
	)	APR 27 1979
Plaintiff-Appellant	)	EMIL E. MELFI, JR.
	)	Clerk U.S. Court
vs.	)	of Appeals
	)	
TEXACO, INC.,	)	No. 76-3471
	)	
Defendant-Appellee	)	MEMORANDUM

Appeal from the United States District Court for the Central District of California

Before: Hug and Tang, Circuit Judges, and Burns, District Judge*

Harold E. Rankin was a Texaco service station lessee-operator. He sued Texaco for breach of contract and fraud, alleging that Texaco failed to supply him with the amount of gasoline specified in their contract. Texaco based its defense on a "Force Majeure" clause contained in the contract as well as California Commercial Code §2615.

*Honorable James M. Burns, United States District Judge for the District of Oregon, sitting by designation.

At the close of trial, the district court inadvertently began a charge to the jury that it "must be satisfied of the defendant's guilt beyond a reasonable doubt." Realizing its mistake, the court told the jury "excuse me" and "let me restate that to you." It then proceeded to instruct the jury on the correct burden of proof, reiterating on nine occasions that Rankin had to prove his case by a preponderance of the evidence. Rankin made no objection to the jury instructions as given or the manner in which they were corrected. The jury returned a verdict for Texaco. Rankin now appeals, contending that the district court's erroneous reference during the jury instructions requires reversal.

Under Fed. R. Civ. P. 51:

> . . .No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. . .

Rankin failed to object to the instructions he now claims were prejudicial

and we are precluded by Rule 51 from reviewing them.

Rankin urges that we should apply the "plain error" doctrine and review the challenged instructions. Despite numerous opportunities, this circuit has not adopted the plain error doctrine in civil cases and we decline to do so now. See e.g., Monsma v. Central Mutual Insurance Co., 392 F.2d 49, 52-53 (9th Cir. 1968). Neither do we decide whether the district court's attempt to correct the instructions satisfies the requirements set forth in Seltzer v. Chesley, 512 F.2d 1030 (9th Cir. 1975).

We do note, however, that our disposition causes no injustice. The district court's alleged error was a matter of inadvertence. As soon as it realized its mistake, which was before it had given the full instructions defining that burden of proof, it attempted to rectify it by discussing the correct burden of proof and by restating the proper legal standard several times throughout the instructions. Since this was the only error assigned, the judgment of the district court is AFFIRMED.